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In the Supreme Court of the United States

OCTOBER TERM, 1984

ELSA SINGMAN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the use or threatened use of law or physical force is an essential element of federal crimes that involve the holding of another to a condition of involuntary servitude.

1. On September 23, 1982, petitioners were indicted in the Central District of California for various civil rights, visa fraud, and immigration violations. Count One of the indictment charged petitioners with conspiracy to violate 8 U.S.C. 1324(a)(1) (importation of illegal aliens), 18 U.S.C. 1546 (visa fraud), 18 U.S.C. 1581 (holding in peonage), 18 U.S.C. 1583 (enticement into involuntary servitude), and 18 U.S.C. 1584 (holding in involuntary servitude), by inducing Indonesians to travel to the United States to live and work for a term of two or three years; obtaining nonimmigrant tourist or business visas for them by false representations; arranging their transportation to the United States and

transporting them to various residences in the Los Angeles area; arranging this travel with the intent that the Indonesians be held in involuntary servitude or in peonage once they arrived in the United States; and holding their passports and return airline tickets to prevent them from leaving their employment or returning to Indonesia prior to the completion of their terms of service. Counts 2 through 17 charged petitioners with enticing named individuals into involuntary servitude, in violation of 18 U.S.C. 1583; Counts 18 through 24 charged that petitioners held named individuals in involuntary servitude, in violation of 18 U.S.C. 1584; Counts 25 through 31 charged that petitioners held named individuals in peonage, in violation of 18 U.S.C. 1581; Counts 32 through 36 charged visa fraud, in violation of 18 U.S.C. 1546; and Counts 37 through 52 charged importation of named illegal aliens, in violation of 8 U.S.C. 1324(a)(1).

On petitioners' motion, the district court ordered the government to submit a bill of particulars specifying the means by which petitioners held the Indonesian workers in involuntary servitude or peonage and disclosing any evidence that any petitioner physically restrained any worker from leaving his employment or control. The government's bill of particulars (C.A. App. 252-290) alleged that petitioners engaged in a scheme in which they illegally brought indigent, non-English speaking Indonesians into the United States, confiscated their passports and return airline tickets, required them to work long hours for little or no pay, and took various other steps that effectively prevented the workers from either returning to Indonesia or subsisting in the United States if they left their employment.

The district court dismissed all but five of the counts alleging involuntary servitude or peonage. Counts 16, 24, 28, 29, and 30 were not dismissed because they alleged either that physical force had been used against the named

victims, or that the named victims had been specifically warned that they would be arrested if they left their employer's house, or both. The court also eliminated from the conspiracy count all references to slavery, peonage, and enticement into involuntary servitude. Pet. App. A17-A23.

Pursuant to 18 U.S.C. 3731, the government appealed the district court's order dismissing the involuntary servitude and peonage counts and deleting portions of the conspiracy count.¹ The court of appeals reversed and remanded (Pet. App. A1-A14). It reinstated the dismissed counts, holding that “[f]or purposes of 18 U.S.C. §§ 1581, 1583, and 1584, the use, or threatened use, of law or physical force is not an essential element of a charge of ‘holding’ in involuntary servitude” (Pet. App. A14). The court of appeals analyzed relevant case law, as well as the purposes of the Thirteenth Amendment and its enforcing statutes, and concluded that forms of coercion other than law or physical force could result in violation of involuntary servitude statutes. The court concluded that the allegations that petitioners had “engaged in specific improper or wrongful conduct with the intent to coerce the Indonesian servants into performing services for them involuntarily, and that the conduct had the intended effect, are sufficient to preclude dismissal” (*ibid.*).

3. The only question presented by petitioners (see Pet. i) is whether use or threatened use of law or physical force is an essential element of holding to involuntary servitude under 18 U.S.C. 1584 and related statutes. Whatever the merits of petitioners' contention, it is not currently ripe for review by this Court.² The court of appeals' decision places

¹The government did not appeal the dismissal of Count 18 of the indictment.

²It is now almost two years since the return of the indictment and more than 17 months since the district court's order. Further interlocutory review at this time would cause additional delay in the trial of the charges against petitioners.

petitioners in precisely the same position they would have occupied if the district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contention will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their statutory interpretation claim to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them.³ Accordingly, review by this Court of the court of appeals' decision would be premature at this time.⁴

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

AUGUST 1984

³Postponement of further review until a final judgment has been entered would be particularly appropriate here. Full development of the factual record in this case will help to focus the question of what is required under federal statutes to show a holding to involuntary servitude.

⁴Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

